

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE
STATE OF HAWAII

In the Matter of

PUBLIC UTILITIES COMMISSION

Instituting a Proceeding to Investigate the
Implementation Of Feed-in Tariffs.

DOCKET NO. 2008-0273

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**BLUE PLANET FOUNDATION'S COMMENTS ON
INFORMAL DRAFTS OF PROPOSED
TIERS 1 AND 2 TARIFFS**

AND

CERTIFICATE OF SERVICE

SCHLACK ITO LOCKWOOD PIPER & ELKIND
Douglas A. Codiga, Esq.
Topa Financial Center
745 Fort Street, Suite 1500
Honolulu, Hawaii 96813
Tel. (808) 523-6040

Attorney for Blue Planet Foundation

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Blue Planet Foundation ("Blue Planet"), by and through its attorneys Schlack Ito Lockwood Piper & Elkind, and pursuant to the Commission's October 29, 2009 Order Setting Schedule, hereby submits its comments ("Comments") on the informal drafts of proposed Tiers 1 and 2 tariffs ("tariffs") submitted on December 1, 2009 by (i) the State of Hawaii Department of Business, Economic Development and Tourism ("DBEDT"), (ii) the Hawaiian Electric Company, Inc., Hawaii Electric Light Company, Inc., and Maui Electric Company, Limited (collectively, "HECO Companies"), and (iii) Zero Emissions Leasing, LLC ("Zero Emissions").

I. DISCUSSION

A. Comments on DBEDT and Zero Emissions Tariffs.

In general, Blue Planet finds the DBEDT and Zero Emissions tariffs to be consistent with the directives set forth in the Commission's September 25, 2009 Decision and Order ("D&O"), more comprehensive than the HECO Companies' tariff, and appropriately structured and organized. The subject matter of many of the provisions in the DBEDT and Zero Emissions tariffs are substantially similar to the provisions in the HECO tariff, however, and

Blue Planet's comments below on such provisions in the HECO Companies' tariff are intended to apply with equal force to the DBEDT and Zero Emissions tariffs, as may be appropriate.

B. Comments on HECO Companies' Tariff.

The HECO Companies provided a Schedule FIT for HECO ("HECO Schedule FIT") with attached Agreement ("Agreement") and related exhibits. Each of these is discussed in turn.¹

1. HECO Schedule FIT.

a. "Availability" section.

This section states that the schedule is available to "Sellers who own and operate" facilities. *Id.* (emphasis added). This should be changed to "Sellers who own and/or operate facilities." The Agreement² states that it applies to sellers that "owns and/or operate" a facility. Agreement at 1. Seller may not own and operate a facility; for example, a facility may be operated by a different entity.

b. "Metering" section.

It is noted that HECO's Schedule FIT and the Agreement appear to be inconsistent with regard to payment of for installation of meters. The Schedule FIT provides that the installation of meters to record the flow of electric power will be at seller's expense and section 6 of the Agreement states that HECO will supply such meters.

c. "Purchase of Renewable Energy Delivered by Seller to Company" section.

With regard to the proposed rates, Blue Planet suggests that it is difficult to properly evaluate proposed rates in the absence of knowledge concerning anticipated queuing

¹ Blue Planet's comments on the HECO Schedule FIT apply to the schedules submitted by the HECO Companies for other companies and islands. See HECO Companies' Response to SA/HSEA-IR-8 submitted Dec. 14, 2009 at 1 (tariffs identical for each of the companies and islands).

² See "Schedule FIT Tier 1 (20 kW or Less and Tier 2 (Greater Than 20 KW and Less than 500 kW) Agreement," attached as Appendix I to the proposed Schedule FIT – HECO.

and interconnection procedures. For example, the HECO Companies have indicated they intend to modify Rule 14.H. *See* HECO Companies Response to SA/HSEA IR-9 filed submitted Dec. 14, 2009 at 1. Modifications to Rule 14.H may impact a seller's interconnection costs.

Blue Planet is also concerned that the HECO Companies' proposed Tier 2 rate for in-line hydro of 6.8 cents per kilowatt hour appears likely to discourage if not foreclose use of the baseline rate by developers of emerging technologies or other technologies not selected by the Commission as eligible for the initial FIT program. The D&O establishes a "baseline" FIT rate to "encourage other renewable energy technologies." *Id.* at 1 (emphasis added). The baseline rate is to be "equal to the lowest specified FIT rate for any given project size." *Id.* at 36.

Under the FIT rates proposed in the HECO Companies' proposed Schedule FITs, the baseline rate would be 6.8 ¢/kWh. This rate is approximately half the HECO Companies' published on-peak, off-peak and Schedule Q avoided energy cost rates. *See* Avoided Energy Costs, Hawaiian Electric Company, Hawaii Electric Light Company, Maui Electric Company, *available at* www.heco.com. Such a low rate appears unlikely to fulfill the Commission's mandate to "encourage other renewable energy technologies." *Id.* Assuming a Tier 2 hydro rate of 6.8 ¢/kWh remains under consideration in this proceeding, it is suggested that to resolve this problem and comply with the Commission's mandate for a baseline FIT rate, the Tier 2 hydro rate of 6.8 ¢/kWh should be deleted and Tier 2 hydro projects should be eligible for the FIT baseline rate as reestablished without the Tier 2 hydro rate of 6.8 ¢/kWh.

d. "Term" section.

The term should commence upon commercial operation of the facility rather than the execution date of the Agreement. This is appropriate because there may be a significant amount of time between execution of the Agreement and commercial operation and to provide consistency with pro formas relying on calculations of revenues over a twenty-year period.

e. “Interconnection” section.

Blue Planet supports standard interconnection terms and conditions, and a standard interconnection agreement, for all FIT and non-FIT as-available renewable energy procurement mechanisms, such as competitive bidding, bilateral power purchase agreements, net energy metering, Schedule Q, and possibly the PV Host Program. Issues specific to a certain contracting mechanism should be addressed in the tariff; the scope of the standardized interconnection agreement should be limited to technical issues only. A standardized interconnection agreement would support development and implementation of transparent and highly coordinated and integrated queuing processes for all contracting mechanisms. In addition, because a standardized interconnection agreement would be limited to technical issues, and could incorporate by reference the most current reliability standards, it will support expansion of the ability of the electric grid to accommodate increasing as-available renewable resources due to future upgrades to the grid, including proposed “smart grid” improvements.

f. “Seller participation” section.

The HECO FIT Schedule states that the availability of service under the HECO FIT Schedule shall be closed as determined through “reliability standards and other appropriate mechanisms.” *Id.* at 3. This section should be clarified to indicate that the availability of service is to be established by reference to the FIT program cap of the nameplate capacity equal to 5% of the 2008 peak demand for each of the HECO Companies, subject to potential reductions based on reliability standards. D&O at 55. It is also suggested that this section include reference to the D&O’s requirement that the utilities document the reasons for failure to interconnect based on reliability standards. *See* D&O at 44.

On pages 2-3, there are four sections titled, “Seller Participation,” “Allowed Project Development Timeframe,” “Schedule FIT Reservation Fee,” and “Security Deposits.” It

is suggested that these provisions be modified in accordance with queuing and interconnection procedures to be developed by the Independent Observer and the parties to this proceeding, to the extent feasible under the procedural schedule in this matter. As the HECO Companies have noted, they propose that steps and tasks required to interconnect facilities be developed in conjunction with the Independent Observer. *See* HECO Companies' Response to DBEDT/HECO-IR-11 submitted Dec. 14, 2009 at 2.

g. "Allowed Project Development Timeframe" section.

Timeframes must take into consideration typical delays associated with development of capital projects in Hawaii relating to government permits and approvals concerning land use and environmental and cultural resources. It is further noted that the final version of this section should set forth the "timeframes determined and approved by the Commission" and that the parties may propose such timeframes to the Commission.

h. "Schedule FIT Reservation Fee" section.

This section refers to submission of a reservation fee "in accordance with the procedures provided in this Schedule." The HECO FIT Schedule does not appear to identify any such procedures.

i. "Participation in other Company Programs" section.

This section states that sellers with "multiple generators" may not participate in "other Company interruptible or net energy metering programs." The proposed Schedule FIT appears to attempt to limit a seller to one facility per physical address. It is unclear what is intended by the term "multiple generators" and the proposed limitation on participation in the net energy metering program. *See, e.g.,* HECO Response to DBEDT/HECO-IR-6 submitted Dec. 14, 2009 at 1 (proposing to refine and clarify the section concerning multiple generators).

2. Agreement.

Section 2(b) states that seller shall not attempt to renegotiate the terms and conditions of the Agreement. This requirement should apply equally to the HECO Companies. The Agreement should state that Company shall not attempt to renegotiate the terms and conditions of the Agreement.

Section 2(d) states that the Agreement shall not be construed as a “take or pay” contract and that the utility shall have no obligation to pay for any energy that has not actually been generated, measured and delivered. *Id.* It is unclear at this time whether and to what extent this comports with the D&O in this proceeding.

With regard to section 8, “Termination for Cause,” it is suggested that the potential causes enumerated as subsections 2 through 8 in subsection 8(a) should be added to subsection 8(c), to the extent it would be reasonable and appropriate. Seller and Company should have equal rights of termination for cause. This is necessary in part to ensure and support confidence in the FIT program on the part of project developers and financiers. Subsection (a)(4) allows termination in the event a petition for involuntary bankruptcy is filed against the seller. This clause should be struck as the seller may have relatively little control over the filing of a petition for involuntary bankruptcy against it. It is further suggested that thirty (30) day time periods set forth in section 8 be changed to one hundred eighty (180) day time periods throughout section 8 to commensurate with the relative technical complexity and level of investment regarding the power generating sources, and to allow sufficient time for the parties to resolve technical and other issues.

Section 9, “Facility Development Milestones,” states that the seller agrees to develop the facility in an expeditious manner “to enable the Company to achieve its renewable

energy and Feed-in Tariff program objectives.” *Id.* It is suggested that the clause “to enable the Company to achieve its renewable energy and Feed-in Tariff program objectives” be struck from the Agreement. Although Blue Planet supports development of facilities in an expeditious manner, achievement of renewable energy and FIT objectives is the legal responsibility of the HECO Companies. Language in a contractual agreement implying or suggesting that non-utility parties are legally responsible for helping to achieve utility renewable energy requirements or objectives may negatively influence developer and financier perceptions of risk to the detriment of the FIT program. For the same reasons, the definition “Renewable Portfolio Standards” in Appendix A to the Agreement, which sets forth the percentage requirements for the HECO Companies, should also be deleted.

Finally, Appendix C to the Agreement, “Purchase of Energy by Company,” states that the Company shall accept and pay only for energy “generated” and “delivered” to the Company. It is unclear at this time whether and to what extent this comports with the D&O.

DATED: Honolulu, Hawaii, December 15, 2009.



DOUGLAS A. CODIGA
Attorney for Blue Planet Foundation

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this date a copy of the foregoing document was
duly served upon the following individuals by placing a copy of same in the United States Mail,
postage prepaid, and/or by electronic service, as follows:

DEAN NISHINA
EXECUTIVE DIRECTOR
DEPT. OF COMMERCE & CONSUMER AFFAIRS
DIVISION OF CONSUMER ADVOCACY
P.O. Box 541
Honolulu, HI 96809

2 copies by U.S. Mail and
Electronic Service

DEAN MATSUURA
MANAGER
REGULATORY AFFAIRS
HAWAIIAN ELECTRIC COMPANY, INC.
P.O. Box 2750
Honolulu, HI 96840-0001

Electronic Service

JAY IGNACIO
PRESIDENT
HAWAII ELECTRIC LIGHT COMPANY, INC.
P. O. Box 1027
Hilo, HI 96721-1027

Electronic Service

EDWARD L. REINHARDT
PRESIDENT
MAUL ELECTRIC COMPANY, LTD.
P. O. Box 398
Kahului, HI 96732

Electronic Service

THOMAS W. WILLIAMS, JR., ESQ.
PETER Y. KIKUTA, ESQ.
DAMON L. SCHMIDT, ESQ.
GOODSILL, ANDERSON QUINN & STIFEL
Alii Place, Suite 1800
1099 Alakea Street
Honolulu, HI 96813

Electronic Service

Counsel for Hawaiian Electric Company, Inc.
Hawaii Electric Light Company, Inc.
Maui Electric Company, Ltd.

ROD S. AOKI, ESQ.
ALCANTAR & KAHL LLP
120 Montgomery Street, Suite 2200
San Francisco, CA 94104

Electronic Service

Counsel for Hawaiian Electric Company, Inc.
Hawaii Electric Light Company, Inc.
Maui Electric Company, Ltd.

THEODORE PECK
DEPARTMENT OF BUSINESS, ECONOMIC
DEVELOPMENT, AND TOURISM
State Office Tower
235 South Beretania Street, Room 501
Honolulu, HI 96813

Electronic Service

ESTRELLA SEESE
DEPARTMENT OF BUSINESS, ECONOMIC
DEVELOPMENT, AND TOURISM
State Office Tower
235 South Beretania Street, Room 501
Honolulu, HI 96813

Electronic Service

MARK J. BENNETT, ESQ.
DEBORAH DAY EMERSON, ESQ.
GREGG J. KINKLEY, ESQ.
DEPARTMENT OF THE ATTORNEY GENERAL
425 Queen Street
Honolulu, HI 96813

Electronic Service

Counsel For Department of Business, Economic
Development, and Tourism

CARRIE K.S. OKINAGA, ESQ.
GORDON D. NELSON, ESQ.
DEPT. OF THE CORPORATION COUNSEL
CITY AND COUNTY OF HONOLULU
530 South King Street, Room 110
Honolulu, HI 96813

Electronic Service

Counsel for City and County of Honolulu

LINCOLN S.T. ASHIDA, ESQ.
WILLIAM V. BRILHANTE JR., ESQ.
MICHAEL J. UDOVIC, ESQ.
DEPT. OF THE CORPORATION COUNSEL
COUNTY OF HAWAII
101 Aupuni Street, Suite 325
Hilo, HI 96720

Electronic Service

Counsel for County of Hawaii

MR. HENRY Q CURTIS
MS. KAT BRADY
LIFE OF THE LAND
76 North King Street, Suite 203
Honolulu, HI 96817

Electronic Service

MR. CARL FREEDMAN
HAIKU DESIGN & ANALYSIS
4234 Hana Highway
Haiku, HI 96708

Electronic Service

MR. WARREN S. BOLLMEIER II
PRESIDENT
HAWAII RENEWABLE ENERGY ALLIANCE
46-040 Konane Place, #3816
Kaneohe, HI 96744

Electronic Service

MR. MARK DUDA
PRESIDENT
HAWAII SOLAR ENERGY ASSOCIATION
P.O. Box 37070
Honolulu, HI 96837

Electronic Service

MR. RILEY SAITO
THE SOLAR ALLIANCE
73-1294 Awakea Street
Kailua-Kona, HI 96740

Electronic Service

MR. JOEL K. MATSUNAGA
HAWAII BIOENERGY, LLC
737 Bishop Street, Suite 1860
Pacific Guardian Center, Mauka Tower
Honolulu, HI 96813

Electronic Service

KENT D. MORIHARA, ESQ.
KRIS N. NAKAGAWA, ESQ.
SANDRA L. WILHIDE, ESQ.
MORIHARA LAU & FONG LLP
841 Bishop Street, Suite 400
Honolulu, HI 96813

Electronic Service

Counsel for Hawaii Bioenergy, LLC

MR. THEODORE E. ROBERTS
SEMPRA GENERATION
101 Ash Street, Hq. 12
San Diego, CA 92101

Electronic Service

MR. CLIFFORD SMITH
MAUI LAND & PINEAPPLE COMPANY, INC.
P.O. Box 187
Kahului, HI 96733

Electronic Service

KENT D. MORIHARA, ESQ.
KRIS N. NAKAGAWA, ESQ.
SANDRA L. WILHIDE, ESQ.
MORIHARA LAU & FONG LLP
841 Bishop Street, Suite 400
Honolulu, HI 96813

Electronic Service

Counsel for Maui Land & Pineapple Company, Inc.

MR. ERIK KVAM
CHIEF EXECUTIVE OFFICER
ZERO EMISSIONS LEASING LLC
2800 Woodlawn Drive, Suite 131
Honolulu, HI 96822

Electronic Service

PAMELA JOE, ESQ.
SOPOGY INC.
2660 Waiwai Loop
Honolulu, HI 96819

Electronic Service

GERALD A. SUMIDA, ESQ.
TIM LUI-KWAN, ESQ.
NATHAN C. NELSON, ESQ.
CARLSMITH BALL LLP
ASB Tower, Suite 2200
1001 Bishop Street
Honolulu, HI 96813

Electronic Service

Counsel for Hawaii Holdings, LLC, dba First Wind
Hawaii

MR. CHRIS MENTZEL
CHIEF EXECUTIVE OFFICER
CLEAN ENERGY MAUI LLC
619 Kupulau Drive
Kihei, HI 96753

Electronic Service

HARLAN Y. KIMURA, ESQ.
Central Pacific Plaza
220 South King Street, Suite 1660
Honolulu, HI 96813

Electronic Service

Counsel for Tawhiri Power LLC

SANDRA-ANN Y.H. WONG, ESQ.
Attorney At Law, A Law Corporation
1050 Bishop Street, #514
Honolulu, HI 96813

Electronic Service

Counsel for Alexander & Baldwin, Inc., through its
division, Hawaiian Commercial & Sugar Company

DATED: Honolulu, Hawaii, December 15, 2009.



DOUGLAS A. CODIGA
Attorney for Blue Planet Foundation